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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Borst et al. )  
Serial No.: 10/638,094 ) Group Art Unit: 1775  
Filed: August 7, 2003 ) Examiner: Xu  
For: DATA STORAGE MEDIUM AND )  
METHOD FOR THE PREPARATION )  
THEREOF )

## VIA FACSIMILE:

Assistant Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

08/01/2005 AKELLEY 00000013 061130 10638094

PETITION UNDER 37 CFR 1.137(a)

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Sir:

Applicants respectfully request revival of the above-mentioned patent application due to unavoidable delay.

On February 10, 2005 a Notice of Allowance was received. Upon review of the file Applicants determined the need to file a Request for Continued Examination (RCE) and an Information Disclosure Statement (IDS). Accordingly, on April 1, 2005 an RCE and IDS were filed. The RCE indicated that the fee should be withdrawn from a deposit account maintained by the Assignee. The Assignee's representative, Colleen Brennan was notified by email of the filing and the amount charged to the deposit account.

Shortly after the submission of the RCE and IDS Applicants' attorneys were notified by Colleen Brennan, manager of the Assignee's deposit account, that the deposit account was no longer to be used and fees were to be paid by credit card. Previously the deposit account

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had been replenished by credit card, a practice which was discontinued by the USPTO. Inquiries were made with regard to the status of recently filed items requiring the payment of fees from the deposit account. It was conveyed to the Applicants' attorneys that there were sufficient funds in the account to address the outstanding transactions.

The deposit account is managed by Colleen Brennan. Colleen Brennan has 10 years of experience in Intellectual Property administration including deposit account management. In almost five years of working with Ms. Brennan she has been utterly reliable and I am unaware of any prior situations in which the deposit account has had insufficient funds.

On June 22, 2005 Applicants received a Notice of Improper Request for Continued Examination. A copy of the notice is submitted herewith. The notice indicated that the RCE was not accompanied by the fee set forth in 37 CFR 1.17(c). The notice also stated that the time period set forth in the notice of allowance continues to run from the mailing date of that notice. As the Notice of Allowance was mailed on February 10, 2005 the non-extendible period for reply ran to May 10, 2005, which is over a month before the mailing date for the Notice of Improper Request for Continued Examination. Accordingly Applicants did not have an opportunity to arrange for an alternative form of payment during the period allowed for response and Applicants believe the application is now abandoned.

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Due to the above described circumstances Applicants submit that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

In addition, Applicant also submits herewith a Request for Continued Examination with payment of the fee by credit card. Applicants believe this constitutes a full and proper response.

If there are any additional charges with respect to this Petition or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

Respectfully submitted,

CANTOR COLBURN LLP

By Patricia S. DeSimone

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Registration No. 48,137

Date: June 23, 2005  
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